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IN THE

Supreme Court of the United States

October Term, 1971

No. ..... 71 - 546

LOS ANGELES NEWSPAPER GUILD, LOCAL 69; LOS ANGELES WEB PRESSMEN'S UNION NO. 18; LOS ANGELES MAILERS' UNION NO. 9; LOS ANGELES STEREOTYPERS' UNION NO. 58; LOS ANGELES PAPER HANDLERS' UNION NO. 3; LOS ANGELES TYPOGRAPHICAL UNION NO. 174; INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT LODGE NO. 94; BUILDING SERVICE AND MAINTENANCE EMPLOYEES UNION NO. 399; NEWSPAPER AND PERIODICAL DRIVERS' AND HELPERS' UNION LOCAL 921; and SAN FRANCISCO-OAKLAND NEWSPAPER GUILD, LOCAL 52 of the AMERICAN NEWSPAPER GUILD,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

LOS ANGELES HERALD-EXAMINER, DIVISION OF THE HEARST CORPORATION; and SAN FRANCISCO EXAMINER, DIVISION OF THE HEARST CORPORATION,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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IN THE

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No. .....

LOS ANGELES NEWSPAPER GUILD, LOCAL 69; LOS ANGELES WEB PRESSMEN'S UNION NO. 18; LOS ANGELES MAILERS' UNION NO. 9; LOS ANGELES STEREOTYPERS' UNION NO. 58; LOS ANGELES PAPER HANDLERS' UNION NO. 3; LOS ANGELES TYPOGRAPHICAL UNION NO. 174; INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT LODGE NO. 94; BUILDING SERVICE AND MAINTENANCE EMPLOYEES UNION NO. 399; NEWSPAPER AND PERIODICAL DRIVERS' AND HELPERS' UNION LOCAL 921; and SAN FRANCISCO-OAKLAND NEWSPAPER GUILD, LOCAL 52 of the AMERICAN NEWSPAPER GUILD,

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LOS ANGELES HERALD-EXAMINER, DIVISION OF THE HEARST CORPORATION; and SAN FRANCISCO EXAMINER, DIVISION OF THE HEARST CORPORATION,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioners, Los Angeles Newspaper Guild, Local 69; Los Angeles Web Pressmen's Union No. 18; Los Angeles Mailers' Union No. 9; Los Angeles Stereotypers' Union No. 58; Los Angeles Paper Handlers' Union No. 3; Los Angeles Typographical Union No. 174; International Association of Machinists and Aero-

space Workers, District Lodge No. 94; Building Service and Maintenance Employees Union No. 399; Newspaper and Periodical Drivers' and Helpers' Union Local 921; and San Francisco-Oakland Newspaper Guild, Local 52 of the American Newspaper Guild, pray that a writ of certiorari issue to review a final judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above entitled case on July 21, 1971, denying petitioners' petition for review and granting enforcement of an order of the National Labor Relations Board under Sections 10(e) and 10(f) of the National Labor Relations Act, as amended, 29 U.S.C. Section 160(e) and (f).

Opinions Below.

The Court of Appeals' judgment was entered on July 21, 1971, in conformity with a *per curiam* opinion handed down on June 7, 1971 and reported at 443 F. 2d 1173. The judgment and opinion are printed in Appendix A hereto.

The decision and order of the National Labor Relations Board, issued on August 27, 1970, are reported at 185 NLRB No. 25 and are printed in Appendix B hereto.

Jurisdiction.

The judgment of the Court of Appeals denying the petition for review and enforcing the Board's order was entered on July 21, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

Questions Presented.

1. Does Section 8(b)(4)(B) of the National Labor Relations Act, as amended, 29 U.S.C. Section 158 (b)(4)(B), prohibit a union from picketing one oper-

ating division of a corporation in furtherance of its labor dispute with another operating division of the same corporation?

2. Did the National Labor Relations Board and the Court of Appeals err in finding and concluding that the Los Angeles Herald-Examiner, Division of The Hearst Corporation, and the San Francisco Examiner, Division of The Hearst Corporation, were separate employers and "persons" within the meaning of the National Labor Relations Act, as amended, 29 U.S.C. Section 151, *et seq.*, and in finding and concluding that the San Francisco Examiner, Division of The Hearst Corporation, was an unconcerned, neutral third person entitled to the protection of Section 8(b)(4)(B) of the National Labor Relations Act, as amended, 29 U.S.C. Section 158(b)(4)(B), with respect to a labor dispute directly involving the Los Angeles Herald-Examiner, Division of the Hearst Corporation?

3. Did the National Labor Relations Board and the Court of Appeals err in concluding that petitioners had violated Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended, 29 U.S.C. Section 158(b)(4)(i) and (ii)(B), by picketing at the premises of the San Francisco Examiner, Division of The Hearst Corporation, and by inducing employees to refuse to cross said picket lines?

Statute Involved.

Section 2(1) of the National Labor Relations Act, as amended, 29 U.S.C. Section 152(1) provides:

> "The term 'person' includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers."

Section 8(b)(4)(i)(ii)(B) of the National Labor Relations Act, as amended, 29 U.S.C. Section 158(b)(4)(i)(ii)(B) provides:

> "It shall be an unfair labor practice for a labor organization or its agents—to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case, an object thereof is:
>
> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: Provided, that nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing."

Section 13 of the National Labor Relations Act, as amended, 29 U.S.C. Section 163, provides:

> "Nothing in this Act, except as specifically provided for herein, shall be construed so as either

to interfere with or impede or diminish in any way the right to strike, or to affect the limitation or qualifications on that right."

Statement of the Case.

This case was before the Court of Appeals upon a petition, pursuant to Section 10(f) of the National Labor Relations Act, as amended ("the Act"), 29 U.S.C. Section 160(f), to review an order of the National Labor Relations Board issued on August 27, 1970, and a cross-application for enforcement of the order.

In its decision and order, the Board concluded that the San Francisco Examiner, Division of The Hearst Corporation ("Examiner"), and the Los Angeles Herald-Examiner Division of The Hearst Corporation ("Herald-Examiner"), are separate employers and persons within the meaning of Section 8(b)(4)(B) of the Act, and that the Examiner is an unconcerned neutral third person, a secondary employer, with respect to a primary labor dispute directly involving the Herald-Examiner. The Board held that petitioners had violated Section 8(b)(4)(B) of the Act by picketing the Examiner on January 5, 1968 in connection with a primary labor dispute directly involving the Herald-Examiner. The Court of Appeals enforced the Board's order.

At all times material hereto certain petitioners (hereinafter referred to as "the unions") have been engaged in a primary labor dispute with the Herald-Examiner, an unincorporated operating division of The Hearst Corporation ("Hearst"). On January 5, 1968, the unions, in furtherance of that dispute, picketed the Examiner, another unincorporated operating division of Hearst.

Hearst is a Delaware corporation with its principal office in New York, New York. It maintains seven unincorporated newspaper divisions, including the Los Angeles Herald-Examiner Division and the San Francisco Examiner Division, as well as a number of other divisions and subsidiaries.

The stockholders of Hearst are two foundations and a testamentary trust, the beneficiaries of which are the family and heirs of William Randolph Hearst, Sr.

The Board of Directors of Hearst is composed of twenty-one members, nine of whom are operating heads of Hearst divisions, subsidiaries or properties, eight of whom are members of the Hearst family, and thirteen of whom are the trustees for the two foundations and the testamentary trust, which are the stockholders of the corporation. George R. Hearst, Jr., the publisher and operating head of the Hearld-Examiner, is a vice-president and a member of the Hearst Board of Directors. He is also a member of the Board of Directors of the San Francisco Newspaper Printing Company, a joint venture of Hearst and the Chronicle Publishing Company, which performs all printing, circulation, distributing, and advertising sales work for the two San Francisco newspapers, the Examiner and the Chronicle, and collects all revenues.

Although the operating heads of the Hearst divisions, including the Herald-Examiner and Examiner, have been given a degree of autonomy by the Board of Directors with respect to day-to-day operations, they must seek approval from the finance committee of the Board of Directors or from the Board of Directors itself on capital expenditures of over $10,000. Additionally, if the divisions do not have sufficient funds for major

expenditures, the expenditures are made from general corporate funds. Major decisions with respect to the operation of a division, such as the creation of the San Francisco Newspaper Printing Company, are made by the Board of Directors, and the details of such operational changes are negotiated and determined by general corporate management together with local management.

The divisions maintain comfortable working cash balances for their normal day-to-day operations and send surplus revenue to the corporation, where it becomes part of the general corporate funds; the divisions do not invest their own profits. The corporate offices in New York invest all the profits of the corporation. If the divisions need funds, they receive money from the general funds of the corporation.

Each of the Hearst newspaper divisions does substantial business with other divisions and subsidiaries of The Hearst Corporation, which perform services related to the publication of newspapers, including some Hearst divisions which perform services on a corporate-wide basis for Hearst newspapers only. Because of the volume of business among the Hearst units, The Hearst Corporation has established an inter-company clearing system for these transactions. The inter-company clearing system operates like a bank clearing system. The units involved do not settle with each other; all of a unit's intercompany transactions are entered in its cash forecast at the end of the month, and thereby settled with the corporation. No cash changes hands between the divisions. If a division's working cash balance drops below the necessary level, or if it does not have sufficient cash to cover its inter-company obligations, the inter-company obligations are deferred, and

the corporation "carries" the division with a "down stream advance", without interst charges.

The corporation maintains corporate-wide insurance and pension plans for employees not covered by union plans; editorial employees have corporate-wide seniority rights; and some employees who work at local divisions are employed directly by the corporation under personal service contracts.

William Randolph Hearst, Jr. is designated as "Editor in Chief", and his column, "The Editor's Report", appears regularly in all Hearst newspapers. He also maintains an editorial board in New York which decides which presidential candidates the Hearst newspapers will support in the national presidential elections, after receiving recommendations from the local publishers, and which is instrumental in decisions with respect to Hearst newspaper support of candidates for other offices. The editorial board also generates editorials and features for the use of all Hearst newspapers.

REASONS FOR GRANTING THE WRIT.

1. The Court of Appeals Has Decided an Important Question of Federal Law Which Has Not Been, but Should Be, Settled by This Court.

In a recent case arising under Section 8(b)(4)(B) of the Act, *NLRB v. Local 825, Intl. Union of Operating Engineers,* 400 U.S. 297 (1971), this Court, in focusing on the dual Congressional purpose of protecting third parties from disputes in which they have no concern while also protecting labor's right to exert legitimate pressure aimed at the primary employer, observed that:

> ". . . [T]here are two threads to Section 8(b)-(4)(B) that require disputed conduct to be classified as either 'primary' or 'secondary'. And the tapestry that has been woven in classifying such conduct is among the labor law's most intricate."

In attempting to weave this intricate tapestry and strike a balance between "primary" and "secondary" activity, the Board and the Courts have encountered a recurrent problem in cases where separate legal entities are interrelated through common ownership, common control, integrated operations, etc.[1]

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[1]See *J. G. Roy & Sons,* 118 NLRB 286, set aside 251 F. 2d 771 (1st Cir. 1958); *Bachman Machine Co.,* 121 NLRB 299, set aside 266 F. 2d 599 (8th Cir. 1959); *General Drivers, etc. Local Union No. 806, IBT (Ada Transit Mix),* 130 NLRB 788; *Amalgamated Lithographers of America, etc.,* 130 NLRB 968, set aside 301 F. 2d 20 (5th Cir. 1962); *Amalgamated Lithographers of America (Ind.),* 130 NLRB 985; *Local 282, Intl. Bhd. of Teamsters (Acme Concrete & Supply Corp.),* 137 NLRB 1321; *Miami Newspaper Printing Pressmen's Local 46,* 138 NLRB 1346, enf'd 322 F. 2d 405 (D.C. Cir. 1963); *Drivers, Chauffeurs & Helpers Local No. 639, IBT (Poole's Warehousing, Inc.),* 158 NLRB 1281; *Carpet Linolcum, Soft Tile & Resilient Floor Covering Layers, Local Union No. 419 v. NLRB,* 429 F. 2d 747 (D.C. Cir. 1970), modifying and remanding 176 NLRB No. 120.

The instant case does not, of course, involve separate legal entities which are in some way interrelated. Rather, it involves two operating arms of a single legal entity, The Hearst Corporation. The issues involved in this case, *i.e.*, whether divisions of a single corporation can, as a matter of law, be deemed to be separate, wholly unconcerned neutral third persons with respect to one another's labor disputes, and whether these divisions of The Hearst Corporation should be treated as separate persons under Section 8(b)(4(B), are matters of first impression in the courts, although the identical issue, involving two other divisions of Hearst is presently pending in the Court of Appeals for the D.C. Circuit.[2]

This Court has frequently interpreted Section 8(b)-(4)(B) as applying only to secondary activity directed at wholly unconcerned, neutral third persons and has admonished the Board and the courts not to apply the strictures of Section 8(b)(4)(B) in such a way as to interfere with the protected rights of unions to engage in primary activity. *NLRB v. Intl. Rice Mill Co.*, 341 U.S. 665 (1951); *NLRB v. Denver Bldg. & Const. Trades Council*, 341 U.S. 675 (1951); *National Woodwork Manufacturers Assn. v. NLRB*, 386 U.S. 612 (1967).

We respectfully submit, and will argue *infra*, that the Court of Appeals decision in the instant case is in

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[2]In a companion case to the instant case, *Baltimore News American Division, The Hearst Corporation*, 185 NLRB No. 26, the Board held that two Hearst divisions in Baltimore, Md. are separate persons within the meaning of §8(b)(4)(B) and held that the union in that case had violated the Act by picketing one of the divisions in connection with its dispute with the other. A petition to review the Board's order has been docketed in the D.C. Circuit as No. 24,641; briefs have been filed and oral argument is scheduled for October 26, 1971.

direct conflict with the general principles enunciated by this Court in *NLRB v. Intl. Rice Mill Co., supra, NLRB v. Denver Bldg. & Const. Trades Council, supra,* and *National Woodwork Manufacturers Assn. v. NLRB, supra,* and with the statute itself and the clear intent of Congress in adopting it.

In addition, however, we respectfully submit that a writ of certiorari should be granted in this case so that this Court can establish appropriate standards and guidelines to be followed by the Board and the courts in determining whether two related entities or two parts of a single entity are to be treated as a single person or as separate persons for purposes of Section 8(B)(4)(B) of the Act. This problem is a recurring one in the administration of the Act and is obviously a critically important issue in the determination of whether conduct is primary or secondary.

The questions raised in this case relating to the "neutrality" of divisions of the same corporation and the "neutrality" of commonly owned corporations for secondary boycott purposes have a profound effect on all large or diversified corporations, on all conglomerates, and on all corporations which operate through more than one division or plant. The determination as to who is truly neutral is central to the secondary boycott provisions of the Act, and with the multiplicity of large corporations and conglomerates, it is important for this Court to establish appropriate standards and guidelines for making this determination with respect to corporations which operate through divisions or multiple geographical locations as well as conglomerates and related corporations.

Although this Court has frequently admonished the Board and the courts to limit their involvement to the

prohibited secondary activity and not to infringe upon primary activity, it has not heretofore given the Board and the courts any guidelines to be used in determining when an allegedly unconcerned neutral is or is not the disinterested third person whom Section 8(b)(4)(B) protects. That such standards and guidelines are necessary is evident from the decision in the instant case, which extends and distorts Section 8(b)(4)(B) well beyond the scope intended by Congress and well beyond the general limitations which have been expressed by this Court. Accordingly, we respectfully urge this Court to grant the writ and establish appropriate standards and guidelines in this complex and crucial area of labor law.

2. The Court of Appeals Decision Is in Conflict With the Statute, the Intent of Congress, and Applicable Decisions of This Court.

As we have argued above, this Court has frequently considered the Congressional purpose in enacting Section 8(b)(4)(B) and has consistently held that regardless of the sweeping language of the statute, its application is to be limited to secondary activities directed against true neutrals—the type of activity Congress intended to prohibit; this Court has frequently cautioned against any reading of the statute which expands its sweep so as to prohibit or interfere with primary picketing.

Thus, in *NLRB v. Intl. Rice Mill Co.*, 341 U.S. 665 (1951), the Court refused to find a violation where a primary picket line had the effect of inducing employees of a neutral employer to refuse to perform services. The Court said:

> "By §13, Congress has made it clear that §8(b)(4) and all other parts of the Act which otherwise

> might be read so as to interfere with, impede or diminish the union's traditional right to strike, may be so read only if such interference, impediment or diminution is 'specifically provided for' in the Act. No such specific provision in §8(b)(4) reaches the incident here. The material legislative history supports this view." 341 U.S. at 673.

And, in *NLRB v. Denver Bldg. & Const. Trades Council,* 341 U.S. 675 (1951), decided on the same day as *Intl. Rice Mill Co.,* the Court upheld the Board's finding of a violation but made it clear that the Board's views must be in "conformity with the dual Congressional objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressures in controversies not their own." 341 U.S. at 692.

See also *National Woodwork Manufacturers Assn. v. NLRB,* 386 U.S. 612 (1967).

A review of the legislative history of Section 8(b)(4)(B) of the Act makes it clear that Congress did not intend to prohibit the type of conduct involved in the instant case.

Thus, the sponsor of the legislation, Senator Taft, in explaining the purpose of the secondary boycott provisions, said:

> "This provision makes it unlawful to resort to a secondary boycott to injure the business of *a third person who is wholly unconcerned* in a disagreement between an employer and his employees." (Emphasis supplied.) 93 Cong. Record 4323, II Legislative History of the LMRA, 1947, 1106.

Senator Taft later noted:

> "The secondary boycott ban is merely intended to prevent a union from *injuring a third person who is not involved in any way* in the dispute or strike, and therefore should not suffer economic damage simply because of the action of the labor organization. It is not intended to apply to a case where the third person is, in effect, in cahoots with or acting as a part of the primary employer." (Emphasis supplied.) 95 Cong. Record 8709.

And, as pointed out by the Chief Judge of the Second Circuit, Learned Hand:

> "The gravamen of a secondary boycott is that its sanctions bear, not on the employer who alone is a party to the dispute, but upon some third party who has no concern in it." *Intl. Bhd. of Electrical Workers v. NLRB,* 181 F. 2d, 34, 37 (2d Cir. 1950), aff'd 341 U.S. 694.

We respectfully submit that, as a matter of law, these two divisions of a single corporation cannot be treated as separate neutral persons, wholly unconcerned in one another's labor disputes, and the conduct of petitioners cannot be viewed as secondary activity proscribed by Section 8(b)(4)(B) of the Act. A single legal entity cannot be a neutral, innocent bystander with respect to a labor dispute involving itself. As a matter of law, one Hearst division cannot be a "neutral" entitled to the protection of Section 8(b)(4)(B) in disputes directly involving another Hearst division. Congress did not intend to and did not in fact prohibit the picketing of one operating division of a corporation in furtherance of a dispute directly affecting another operating division.

In addition, we submit that the facts of this case relating to common, indeed identical, ownership, common control, integration of operations, pooled resources and investments, centralized financial structure, common purchasing, common news coverage, editorials and columns, Hearst family influence and domination throughout the corporation, and other interrelationships within the corporation, preclude a finding under any reasonable or rational factual standard, that the Examiner is a wholly unconcerned neutral with respect to disputes involving the Herald-Examiner.

The type of activity involved in the instant case is not a "secondary boycott" as that term was used by Congress, and is not the type of conduct Congress intended to prohibit. Senator Taft and other proponents of the bill frequently stated that it was designed to eliminate the "secondary boycott" and the examples of union conduct cited in the debates involved union efforts to draw in other neutral employers through pressure calculated to induce them to cease doing business with the primary employer.[8] And the Senate Committee characterized the type of conduct banned by Section 8(b)(4)(B) in the same terms:

> "Thus, it would not be lawful for a union to engage in a strike against employer A for the pur-

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[8]See, e.g., S. Rep. No. 105, 80th Cong., 1st Sess., 7, 8, 22, 54, in I Leg. Hist. of the LMRA of 1947, 413, 414, 428, 460; H.R. Conf. Rep. No. 510, 80th Congr., 1st Sess., 43, in I Leg. Hist. of the LMRA of 1947, S47; 93 Cong. Rec. 3534, 3542, 3559, A2012, in I Leg. Hist. of the LMRA of 1947, 613-614, 630, 658, 869; 93 Cong. Rec. 1910, 3954, 4255, 4261, 5040, 5045-5046, 5147, 6603, in II Leg. Hist. of the LMRA of 1947, 982, 1012, 1055-1056, 1068, 1354, 1365, 1947, 1544.

> pose of forcing that employer to cease doing business with employer B; nor would it be lawful for a union to boycott employer A because employer A uses or otherwise deals in the goods of or does business with employer B (with whom the union has a dispute)." S. Rep. No. 105, 80th Cong., 1st Sess., 22, I Leg. Hist. of the LMRA of 1947, 428.

In the instant case, the unions quite obviously were not picketing for the purpose of forcing the Examiner to cease doing business with the Herald-Examiner nor because the Examiner was doing business with the Herald-Examiner; the picketing here occurred because the Examiner is one arm of the Hearst empire, and the unions are forced to fight the economic strength of that entire empire in this labor dispute. The proscribed object under Section 8(b)(4)(B), to force employer A (the secondary employer) to cease doing business with employer B (the primary), is inapposite to the instant case.

The Board and the Court of Appeals in the instant case, however, have expanded and rewritten the secondary boycott prohibitions of the Act. In total disregard of the purposes underlying Section 8(b)(4)(B), the intent of Congress, the language of the statute, and the legislative history, the Board and the Court of Appeals have prohibited the unions herein from applying economic pressure not only against "secondary" business enterprises doing business with Hearst, but also against all parts of The Hearst Corporation itself, except the part located in Los Angeles, California. The

Board and the Court of Appeals have done here exactly what this Court has consistently warned may not be done—they have prohibited activity which Congress did not prohibit and infringed upon and limited the unions' right to engage in primary picketing activity.

This extension of the "secondary boycott" prohibitions of the Act into the area of primary activity is a fundamental departure from long and well-established rights of labor. The actions of the Board and the Court of Appeals in this case have further complicated an already highly complex area of labor law, have cast serious doubt upon the basic right of labor to engage in peaceful, primary picketing, and have raised substantial questions with respect to the dual purpose underlying Section 8(b)(4)(B), i.e., of protecting neutrals while preserving the right of labor to engage in primary activity. This case raises critical questions relating to the basic policies and purposes underlying Section 8(b)(4)(B) and the Act, as a whole —questions of major importance to all of organized labor and to all corporations which operate through divisions or multiple locations as well as separate, but related, corporations and conglomerates. These questions are fundamental to the application of the "secondary boycott" provisions of the Act, and we respectfully submit that they should be decided by this Court.

Conclusion.

For the foregoing reasons, it is urged that this petition for writ of certiorari should be granted.

Respectfully submitted,

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ANSELL & ANSELL,
BRUNDAGE, NEYHART, GRODIN & BEESON,
BRUNDAGE, NEYHART, MILLER, ROSS & REICH,
GEFFNER & SALZMAN,
ROSENTHAL & LEFF.

APPENDIX "A."

Judgment.

United States Court of Appeals, for the Ninth Circuit.

Los Angeles Newspaper Guild, Local 69, et al., Petitioners, v. National Labor Relations Board, Respondent. and Los Angeles Herald Examiner, Division of The Hearst Corporation; and San Francisco Examiner, Division of The Hearst Corporation, Intervenors. No. 26,-534.

Before: CHAMBERS, ELY and WRIGHT, Circuit Judges.

THIS CAUSE came on to be heard upon a petition of Los Angeles Newspaper Guild, Local 69, et al., to review the order issued against Petitioners, their officers, agents, and representatives on August 27, 1970, and upon cross-application of the National Labor Relations Board to enforce said order. The Court heard argument to respective counsel on June 3, 1971, and has considered the briefs and transcript of record filed in this cause. On June 7, 1971, the Court being fully advised in the premises, handed down its decision denying the petition for review and granting enforcement of the Board's Order. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the United States Court of Appeals for the Ninth Circuit that:

A. The Respondents Los Angeles Newspaper Guild, Local 69; Los Angeles Web Pressmen's Union No. 18; Los Angeles Stereotypers' Union No. 58; Los Angeles Typographical Union No. 174; International Association of Machinists and Aerospace Workers, District

Lodge No. 94, Building Service and Maintenance Employees' Union No. 399; Los Angeles Mailers' Union No. 9; and Los Angeles Paper Handlers' Union No. 3 (hereinafter called Respondent Unions), their officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Inducing or encouraging individuals employed by The San Francisco Examiner Division of The Hearst Corporation, The Chronicle Publishing Company and The San Francisco Printing Company, Inc., or any other person engaged in commerce or in an industry affecting commerce with whom they have no primary labor dispute, to engage in a strike or refusal in the course of their employment to perform services, where an object thereof is to force or require the above-named persons to cease doing business with each other or with their customers and suppliers, under circumstances prohibited by Section 8(b)(4)(i)(B) of the National Labor Relations Act (hereinafter called the Act).

(b) Threatening, restraining, or coercing the above-named persons or any other person engaged in commerce or in an industry affecting commerce with whom they have no primary labor dispute, where an object thereof is to force or require the above-named persons to cease doing business with each other or with their customers and suppliers, under circumstances prohibited by Section 8(b)(4)(ii)(B) of the Act, as amended.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Post at their business offices and meeting halls in Los Angeles, California, copies of the attached notice marked "Appendix A." Copies of said notice, on forms

provided by the Regional Director for Region 21, (Los Angeles, California) shall, after being duly signed by the above Respondent Unions, be posted by them immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Unions to insure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail to the aforesaid Regional Director sufficient copies of said notice, on forms provided by him, for posting by the San Francisco Examiner, the Chronicle, and the Printing Company, if willing.

(c) Notify the said Regional Director, in writing, within 10 days from the date of this Judgment, what steps have been taken to comply herewith.

B. Respondents Newspaper and Periodical Drivers' and Helpers' Union, Local 921, and San Francisco-Oakland Newspaper Guild, Local 52 of the American Newspaper Guild, their officers, agents, and representatives shall:

1. Cease and desist from:

(a) Inducing or encouraging individuals employed by The San Francisco Printing Company, Inc., or any other person engaged in commerce or in an industry affecting commerce with whom they have no primary labor dispute to engage in a strike or refusal in the course of their employment to perform services, where an object thereof is to force or require said person to cease doing business with The San Francisco Examiner or Chronicle under circumstances prohibited by Section 8(b)(4)(i)(B) of the Act, as amended.

(b) Threatening, restraining, or coercing The San Francisco Printing Company, Inc., or any other persons engaged in commerce or in an industry affecting commerce with whom they have no primary labor dispute, where an object thereof is to force or require said persons to cease doing business, with the San Francisco Examiner or Chronicle under circumstances prohibited by Section 8(b)(4)(ii)(B) of the Act, as amended.

2. Take the following affirmative action designed to effectuate the policies of the Act, as amended:

(a) Post at their business offices and meeting halls in San Francisco, California, copies of the attached notice marked "Appendix B." Copies of said notice, on forms provided by the said Regional Director shall, after being duly signed by the above Respondent Unions be posted by them immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Unions to insure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail to the said Regional Director sufficient copies of said notice, on forms provided by him, for posting by The San Francisco Printing Company, Inc., if willing.

(c) Notify the said Regional Director, in writing, within 10 days from the date of this Judgment, what steps have been taken to comply herewith.

With costs in this Court in
favor of the Board and against
the petitioners.

Costs:

One-half claimed cost of brief of the Board.....$120.68

Endorsed, Judgment Filed and Entered July 21, 1971.

/s/ William B. Luck
William B. Luck
Clerk

A True Copy

Attest: August 16, 1971.

William B. Luck
Clerk

/s/ R. D. Hewitt
Deputy

So Ordered /s/ Richard H. Chambers, /s/ Walter Ely, /s/ Eugene A. Wright, Circuit Judges.

Filed: July 21, 1971. Wm. B. Luck, Clerk.

APPENDIX A

NOTICE

TO ALL EMPLOYEES OF THE SAN FRANCISCO EXAMINER DIVISION OF THE HEARST CORPORATION, THE CHRONICLE PUBLISHING COMPANY AND THE SAN FRANCISCO PRINTING COMPANY, INC.

TO ALL MEMBERS OF LOS ANGELES NEWSPAPER GUILD, LOCAL 69; LOS ANGELES WEB PRESSMEN'S UNION NO. 18; LOS ANGELES STEREOTYPERS' UNION NO. 58; LOS ANGELES TYPOGRAPHICAL UNION NO. 174; INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT LODGE NO. 94; BUILDING SERVICE AND MAINTENANCE EMPLOYEES UNION NO. 399; LOS ANGELES MAILERS' UNION NO. 9; AND LOS ANGELES PAPER HANDLERS' UNION NO. 3.

Posted pursuant to a Judgment of the United States Court of Appeals enforcing an Order of the National Labor Relations Board, an agency of the United States Government.

WE WILL NOT engage in, or induce or encourage any individual employed by THE SAN FRANCISCO EXAMINER DIVISION OF THE HEARST CORPORATION, THE CHRONICLE PUBLISHING COMPANY, THE SAN FRANCISCO PRINTING COMPANY, INC., or any other person engaged in commerce or in an indus-

try affecting commerce, to engage in a strike or refusal of the course of such individual's employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, where an object thereof is to force or require THE SAN FRANCISCO EXAMINER DIVISION OF THE HEARST CORPORATION, THE CHRONICLE PUBLISHING COMPANY, THE SAN FRANCISCO PRINTING COMPANY, INC. to cease doing business with one another or with their customers or suppliers; or to force or require any other person to cease doing business with THE SAN FRANCISCO DIVISION OF THE HEARST CORPORATION, THE CHRONICLE PUBLISHING COMPANY OR THE SAN FRANCISCO PRINTING COMPANY, INC.

WE WILL NOT coerce or restrain THE SAN FRANCISCO EXAMINER DIVISION OF THE HEARST CORPORATION, THE CHRONICLE PUBLISHING COMPANY, THE SAN FRANCISCO PRINTING COMPANY, INC. or any other person for such an object.

LOS ANGELES NEWSPAPER GUILD, LOCAL 69
(Labor Organization)

Dated..... By.....
(Representative) (Title)

LOS ANGELES WEB PRESSMEN'S UNION NO. 18
(Labor Organization)

Dated..... By.....
(Representative) (Title)

LOS ANGELES STEREOTYPERS' UNION NO. 58
(Labor Organization)

Dated..... By.....
(Representative) (Title)

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT LODGE NO. 94
(Labor Organization)

Dated..... By.....
(Representative) (Title)

BUILDING SERVICE AND MAINTENANCE EMPLOYEES UNION NO. 399
(Labor Organization)

Dated..... By.....
(Representative) (Title)

LOS ANGELES MAILERS' UNION NO. 9
(Labor Organization)

Dated..... By.....
(Representative) (Title)

LOS ANGELES PAPER HANDLERS' UNION NO. 3
(Labor Organization)

Dated..... By.....
(Representative) (Title)

LOS ANGELES TYPOGRAPHICAL UNION NO 174
(Labor Organization)

Dated..... By.....
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If members have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 849 South Broadway, Los Angeles, Calif., Telephone 213-688-5200.

APPENDIX B

NOTICE

TO ALL EMPLOYEES OF THE SAN FRANCISCO PRINTING COMPANY, INC.

TO ALL MEMBERS OF NEWSPAPER AND PERIODICAL DRIVERS' AND HELPERS' UNION LOCAL 921 and SAN FRANCISCO-OAKLAND NEWSPAPER GUILD, LOCAL 52, OF THE AMERICAN NEWSPAPER GUILD

Posted pursuant to a Judgment of the United States Court of Appeals enforcing an Order of the National Labor Relations Board, an agency of the United States Government.

WE WILL NOT engage in, or induce or encourage any individual employed by THE SAN FRANCISCO PRINTING COMPANY, INC. or any other person engaged in commerce or an industry affecting commerce, to engage in a strike or refusal in the course of such individual's employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, where an object thereof is to force or require THE SAN FRANCISCO PRINTING COMPANY, INC. or any other person to cease doing business with THE SAN FRANCISCO EXAMINER DIVISION OF THE HEARST CORPORATION or THE CHRONICLE PUBLISHING COMPANY; or to force or require any other person to cease doing business with THE SAN FRANCISCO PRINTING COMPANY, INC.

WE WILL NOT coerce THE SAN FRANCISCO PRINTING COMPANY for such an object.

NEWSPAPER AND PERIODICAL DRIVERS' AND HELPERS' UNION LOCAL 921
(Labor Organization)

Dated.....by.....
(Representative) (Title)

SAN FRANCISCO-OAKLAND NEWSPAPER GUILD, LOCAL 52 OF THE AMERICAN NEWSPAPER GUILD
(Labor Organization)

Dated.....By.....
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If members have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 849 South Broadway, Los Angeles, Calif., Telephone 213-688-5200.

United States Court of Appeals, for the Ninth Circuit.

Los Angeles Newspaper Guild, Local 69, et al., Petitioners, vs. National Labor Relations Board, Respondent. and Los Angeles Herald Examiner, Division of the Hearst Corporation; and San Francisco Examiner, Division of the Hearst Corporation, Intervenors. No. 26,534.

[June 7, 1971].

On Petition for Review and Cross Application for Enforcement of an Order of the National Labor Relations Board.

Before: CHAMBERS, ELY and WRIGHT, Circuit Judges

PER CURIAM:

The petition for review is denied.

The Board's cross application for enforcement is granted. See the Board's opinion, reported at 185 NLRB No. 25.

APPENDIX "B."

185 NLRB No. 25

D-4289
San Francisco, Calif.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD
LOS ANGELES NEWSPAPER GUILD, LOCAL 69;
LOS ANGELES WEB PRESSMEN'S UNION NO. 18;
LOS ANGELES STEREOTYPERS' UNION NO. 58;
LOS ANGELES TYPOGRAPHICAL UNION NO. 174;
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, DISTRICT LODGE NO. 94;
GENERAL WAREHOUSEMEN'S UNION LOCAL 598;
BUILDING SERVICE AND MAINTENANCE EMPLOYEES
UNION NO. 399; LOS ANGELES MAILERS' UNION NO. 9;
LOS ANGELES PAPER HANDLERS' UNION NO. 3;
AND NEWSPAPER AND PERIODICAL DRIVERS' AND
HELPERS' UNION LOCAL 921

and

Case 21-CC-1043

SAN FRANCISCO EXAMINER, DIVISION OF THE
HEARST CORPORATION: AND LOS ANGELES HERALD-
EXAMINER, DIVISION OF THE HEARST CORPORATION
SAN FRANCISCO-OAKLAND NEWSPAPER GUILD, LOCAL
52 OF THE AMERICAN NEWSPAPER GUILD

and

Case 21-CC-1043-2

LOS ANGELES HERALD-EXAMINER DIVISION
OF THE HEARST CORPORATION; AND SAN FRANCISCO
EXAMINER DIVISION OF THE HEARST CORPORATION

Decision and Order.

On March 28, 1969, Trial Examiner Herman Marx issued his Decision in the above-entitled proceeding, finding that certain of the above Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action. He also found that these Respondents did not engage in other unfair labor practices alleged in the complaint, and that Warehousemen's Union engaged in no unfair labor practice. Thereafter the General Counsel, Charging

Parties, and certain of the Respondent filed exceptions to the Trial Examiner's Decision, together with supporting briefs. The Charging Parties filed a supplemental brief in support of their exceptions and a brief in answer to the Respondents' exceptions, and the Respondents filed a brief in opposition to the General Counsel's and Charging Parties' exceptions.

The National Labor Relations Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in this case,[1] and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and modifications.[2]

At all times material herein, the Respondent Los Angeles Unions[3] represented employees of The Los Angeles Herald-Examiner Division of The Hearst Corporation in separate units at Los Angeles, California, and

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[1]The Respondents in the instant case and the respondent in *Baltimore News American Division, The Hearst Corporation,* 185 NLRB No. 26 issued this day, have filed a joint motion to consolidate these two cases for purposes of Decision. The Charging Parties and the General Counsel in both cases have filed oppositions thereto. We hereby deny the Respondents joint motion, as the parties are different in each case, there are some different issues in the instant case, and no useful purpose would be served by consolidation at this stage of the proceedings.

[2]The building at 5th and Mission Streets, San Francisco, where, among other places, picketing occurred, is owned by The San Francisco Examiner Division of The Heart Corporation and the San Francisco Chronicle Publishing Company, and not solely by The Chronicle Publishing Company as the Trial Examiner stated.

[3]Los Angeles Newspaper Guild, Local 69; Los Angeles Web Pressmen's Union No. 18; Los Angeles Stereotypers' Union No. 58; Los Angeles Typographical Union No. 174; International Association of Machinists and Aerospace Workers, District Lodge No. 94; General Warehousemen's Union Local 598; Building Service and Maintenance Employees Union No. 399; Los Angeles Mailers' Union No. 9; and Los Angeles Paper Handlers' Union No. 3.

were engaged in an economic strike in Los Angeles against the Los Angeles Herald-Examiner. In furtherance of this strike, all the Los Angeles Respondents, except the Warehousemen's Union, formed and became members of the Los Angeles Strike Council and picketed various premises of The San Francisco Examiner Division of The Hearst Corporation, The San Francisco Chronicle Publishing Company, and The San Francisco Printing Company, Inc. The Respondent San Francisco Unions are Newspaper and Periodical Drivers' and Helpers' Union Local 921, which represented employees of the Printing Company, and San Francisco-Oakland Newspaper Guild, Local 52, of the American Newspaper Guild, which represented employees of the Printing Company, The San Francisco Examiner, and The San Francisco Chronicle in a multiemployer unit. During the picketing by the Los Angeles Unions, the San Francisco Unions asked employees who were their members at the Printing Company to honor the picket line. That request was honored, causing a stoppage of work by the Printing Company and the suspension of publication of the San Francisco newspapers.

The Trial Examiner found, and we agree, that eight of the Respondent Los Angeles Unions[4] picketed, or caused to be picketed, The San Francisco Examiner Division of The Hearst Corporation, The San Francisco Chronicle Publishing Company, and The San Francisco

[4]We agree with the Trial Examiner, for the reasons stated in his Decision, that the Warehousemen's Union was not responsible for the picketing. Accordingly, we adopt his recommendation that the complaint be dismissed as to it.

Printing Company, Inc. in furtherance of their dispute with The Los Angeles Herald-Examiner Division of The Hearst Corporation, and thereby induced and encouraged employees of, and coerced, the three picketed companies, for the purpose of causing a cessation of business between such companies and their customers and suppliers, and each other, in order to bring pressure to bear on The Los Angeles Herald-Examiner to accede to the Union's demands.

1. We disagree, however, with the Trial Examiner's conclusion that eight of the Los Angeles Respondents did not violate Section 8(b)(4)(B) of the National Labor Relations Act, as amended, by picketing The San Francisco Division of The Hearst Corporation. The Trial Examiner based that conclusion on the ground that the San Francisco Division and the Los Angeles Herald-Examiner Division are not separate persons. We believe that this record, and our decisions in similar cases, require the contrary conclusions.

Section 8(b)(4) forbids unions to (i) induce individuals employed by any person to strike, or (ii) coerce any person, with an object of (B) forcing any person to cease doing business with any other person. Thus, if each division is a person, the picketing was proscribed by Section 8(b)(4)(B) as secondary. Section 2(1) provides that "the term 'person' includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers."

The Board has held with court approval that separate corporate subsidiaries are separate persons, each entitled to the protection of Section 8(b)(4)(B) from the labor disputes of the other, if neither the subsidiaries nor the parent exercises actual or active, as opposed to merely potential, control over the day-to-day operations or labor relations of the other.[5] It is clear that no such active or actual control is exercised here.

The Hearst Corporation is a Delaware corporation engaged in a conglomerate of business activities conducted through some 20 divisions, of which 7 are newspapers, and through 31 separately incorporated subsidiaries.[6] As to the two divisions here involved the president of the Corporation appoints their heads and delegates to them the responsibility for the day-to-day operation of the divisions, including the formulation and implementation of labor relations policies. He may remove them for "an unsatisfactory job," meaning unfavorable earnings.

Each division manager determines the size and salaries of his staff whom he hires, discharges, and promotes. There is no transfer of employees among

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[5]*Knight Newspapers,* 138 NLRB 1346, enfd. 322 F.2d 405 (C.A.D.C.); *Poole's Warehousing,* 158 NLRB 1281. Compare *J. G. Roy and Sons Company v. N.L.R.B.,* 251 F.2d 771 (C.A. 1); *N.L.R.B. v. Bachman Machine Co.,* 266 F.2d 599 (C.A. 8).

[6]The Hearst divisions are engaged in such diverse businesses as the publication of newspapers and magazines; the manufacturer of specialty paper; the operation of ranches and timberlands, a newspaper syndicate, a newsprint brokerage, and a purchasing service; a real estate investment enterprise; and the collection and display of art objects and antiques. The corporate subsidiaries are engaged in such activities as advertising representative, movie making, the acquisition and sale of musical compositions, the distribution of publishing equipment and supplies, and the processing of photographs.

divisions. Although the Corporation makes available to the divisions certain insurance, pension, and salary-continuation programs, each division may accept such programs or not as it sees fit.

Each division manager has final authority to formulate and effectuate news, editorial, production, advertising, and circulation policies. He decides whether or not to use Corporation-owned services and features. Thus, the Herald-Examiner purchases its newsprint from the Hearst Enterprises Division, but the San Francisco Examiner does not.

Each division maintains its own financial system, subject to uniform reporting requirements for tax purposes. The divisions retain "a comfortable cash balance" as "operating profits" and remit the surplus to the Corporation. Although corporate approval is required for expenditures of more than $10,000, such approval has never been withheld.

These facts establish that the authority exercised by the Corporation over the divisions is limited to certain financial matters inherent in common ownership, and amounts only to potential control over their operations. The Corporation does not exercise actual, or active, control over these divisions which operate independently of the Corporation and each other as separate autonomous newspaper enterprises.

It is apparent, therefore, that if these two divisions were corporate subsidiaries instead of divisions, they would be entitled to protection of Section 8(b)(4)(B) from each other's labor disputes. To deprive them of the protection of the statute on the technical ground that they are merely divisions of the Corporation would exalt from over substance, a result which we are

convinced is not required by the statute. Cf. *Alexander Warehouse*, 128 NLRB 916, where the Board found that three geographically proximate warehouses of the same corporation could not be regarded as separate employers under a comparable statutory provision because the day-to-day operations of each warehouse, including their labor relations policies, were subject to the corporation's actual control, and were operated in the same manner as allies. By contrast, the divisions here involved are not subject to actual control by The Hearst Corporation, serve different newspaper advertisers and readers in widely separated geographic areas, and thus, under the principle of that case, are neutral employers.

Section 2(1) on its face does not state that only the entities specifically enumerated therein are to be considered "persons" to the exclusion of all others. It states, instead, that "person" *includes* those entities enumerated. Therefore, where, as here, a virtually autonomous division of a corporation has all the relevant attributes of a person excepting only separate incorporation, logic dictates that it too be considered a person.[7]

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[7]See *Local Union #25, International Brotherhood of Teamsters et al. v. New York, New Haven, and Hartford Railroad Co.*, 350 U.S. 155, cited in the legislative history to the 1959 amendments, in which the Supreme Court held the railroad was protected against secondary pressures by virtue of the definition of "employer." The Court stated that since "railroads are not excluded from the Act's definition of 'person,' they are entitled to Board protection from the kind of unfair labor practice proscribed by Section 8(b)(4)(A). See also, *Local No. 24, International Brotherhood of Teamsters, et al. (A.C.E. Transportation) v. N.L.R.B.*, 266 F.2d 675, 680 (C.A.D.C.) where the Court stated that whether a violation of 8(b)(4)(A) and (B) has occurred "cannot be reached by the use of any legalistic word or phrase. . . ."

Moreover, we believe this interpretation conforms with the intent of Congress when in 1959 it amended the Act by substituting the word "person" for "employer" in Section 8(b)(4). Although we do not find the legislative history particularly helpful in resolving the issue before us, it is generally recognized that this amendment was intended to reduce the impact of labor disputes by expanding the protection afforded by this Section.

As the Supreme Court stated in *Local 1976 Carpenters, (Sand, Door and Plywood Co.) v. N.L.R.B.*, 357 U.S. 94, 100, Congress' purpose in enacting the Taft-Hartley Act amendments was "to restrict the area of industrial conflict insofar as this could be achieved by prohibiting the most obvious widespread and, as Congress evidently judged, dangerous practice of unions to widen that conflict: the coercion of neutral employers, themselves not concerned with a primary labor dispute, through the inducement of the employees to engage in strikes or concerted refusals to handle goods."

As observed, under the principles established in *Alexander Warehouse* and *Knight Newspapers*, each of these divisions would be treated as a separate employer, both before and after the 1959 amendment. Not to treat them as separate persons would result in widening, instead of narrowing, labor disputes and contracting instead of expanding the coverage of Section 8(b)(4)(B) contrary to the intent of Congress and the mandate of the Supreme Court.

Moreover, the General Counsel has issued and the Board and courts have found merit in complaints

against divisions of corporations under Section 10,[8] which provides under (a) that "the Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice . . ." and under (b) that "whenever it is charged that any person has engaged in, or is engaging in any such unfair labor practice, the Board . . . shall have the power to issue a complaint. . . ." Indeed Congress must have recognized that such practice was extant when it enacted the 1959 amendments.

Accordingly, as the Los Angeles Unions' picketing of the San Francisco Examiner had the effect of coercing it and inducing its employees to strike, both with an object of causing a cessation of business between the Examiner and its customers and suppliers, we find that such picketing violated Section 8(b)(4)(i)(ii)(B) of the Act.[9]

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[8]See e.g. *N.L.R.B. v. The Bendix Corporation (Research Laboratories Division)*, 299 F.2d 308 (C.A. 6) cert. denied 371 U.S. 827; *N.L.R.B. v. Dan River Mills Incorporated, Alabama Division*, 274 F.2d 381 (C.A. 5), *N.L.R.B. v. General Electric Company, Specialty Control Department*, 383 F.2d 152 (C.A. 4) *International Union of Electrical Radio and Machine Workers, AFL-CIO, Frigidaire Local 801 v. N.L.R.B. (General Motors Corporation, Frigidaire Division)*, 307 F.2d 679 (C.A.D.C.), cert. denied, 371 U.S. 936; *N.L.R.B. v. Insulating Fabricators, Inc., Southern Division*, 338 F.2d 1002 (C.A. 4); *International Union, United Automobile Workers of America, U.A.W. v. N.L.R.B. and Wooster Div. of Borg-Warner Corp.*, 236 F.2d 898 (C.A. 6); *Intertype Company, a Division of Harris-Intertype Corporation v. N.L.R.B.* 371 F.2d 787 (C.A. 4); *Los Angeles Mailers Union #9, I.T.U.*, 135 NLRB 1130. *Hilboro Newspapers Publishing Printing Company, Division of The Hearst Publishing Company, Inc.*, 127 NLRB 591. Divisions are considered to be employers in representation case proceedings *General Motors Corp. (Detroit Diesel Eng. Div.)*, 51 NLRB 457.

[9]Accord, *Penello v. American Federation of Television and Radio Artists*, 291 F. Supp. 409 (U.S.D.C. Md.); and *Kennedy v. San Francisco-Oakland Newspaper Guild* (U.S.D.C., N.D. Calif.), February 7, 1968, affd. 412 F.2d 541 (C.A. 9).

2. As we have found the San Francisco Examiner to be a neutral person, we also find, in agreement with the Trial Examiner, that the eight Los Angeles Respondent Unions violated Section 8(b)(4)(i)(ii)(B) of the Act by picketing The Chronicle Publishing Company and The San Francisco Printing Company, Inc. in furtherance of their dispute with The Los Angeles Herald-Examiner Division of The Hearst Corporation because these companies are also neutrals to the dispute and separate persons within the meaning of the Act.

3. The Trial Examiner found, and we agree, that the two Respondent San Francisco Unions violated Section 8(b)(i)(B) of the Act by inducing employees of The San Francisco Printing Co., Inc. to strike in support of the Los Angeles Unions' dispute with the Herald-Examiner. We also find that these two Unions violated Section 8(b)(4)(ii)(B), as their inducement of employees of the Printing Company was successful in causing them to refuse to continue to work, thus coercing or restraining the Printing Company.[10]

The Remedy

Having found that the Respondents, with the exception of the Warehousemen's Union, have engaged in additional unfair labor practices within the meaning of the Act, we shall recommend that the Respondents cease and desist therefrom and take appropriate affirmative action.

Amended Conclusions of Law

1. The San Francisco Examiner Division of The Hearst Corporation, and The Los Angeles Herald-Examiner Division of The Hearst Corporation are engaged

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[10] *Interstate Employers Association*, 139 NLRB 550, 551, footnote 1.

in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The above Divisions, The San Francisco Chronicle Publishing Company, and The San Francisco Printing Company, Inc. are persons engaged in an industry affecting commerce within the meaning of Section 8(b)-(4)(B) and Section 2(6) and (7) of the Act.

3. The Respondents are labor organizations within the meaning of Section 2(5) of the Act.

4. By inducing individuals employed by The San Francisco Examiner Division of The Hearst Corporation, The Chronicle Publishing Company and The San Francisco Printing Company, Inc. to engage in a strike or a refusal in the course of their employment to perform services, with an object of forcing said persons to cease doing business with each other and with their customers and suppliers, the Los Angeles Unions have engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i)(B) and Section 2(b) and (7) of the Act.

5. By threatening, coercing, and restraining the above persons with an object of forcing said persons to cease doing business with each other and with their customers and suppliers, the Respondent Los Angeles Unions have engaged in unfair labor practices within the meaning of Section 8(b)(4)(ii)(B) and Section 2(6) and (7) of the Act.

6. By inducing individuals employed by The San Francisco Printing Company, Inc., to engage in a strike or refusal in the course of their employment to perform services, with an object of forcing said person to cease doing business with The San Francisco Examiner Division of The Hearst Corporation, with The Chronicle

Publishing Company, and with its customers and suppliers, the Respondent San Francisco Unions have engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i)(B) and Section 2(6)(7) of the Act.

7. By coercing, and restraining The San Francisco Printing Company, Inc., with an object of forcing said person to cease doing business with the other persons described above, the Respondent San Francisco Unions have engaged in unfair labor practices within the meaning of Section 8(b)(4)(ii)(B) and Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

A. The Respondents Los Angeles Newspaper Guild, Local 69; Los Angeles Web Pressmen's Union No. 18; Los Angeles Stereotypers' Union No. 58; Los Angeles Typographical Union No. 174; International Association of Machinists and Aerospace Workers, District Lodge No. 94; Building Service and Maintenance Employees' Union No. 399; Los Angeles Mailers' Union No. 9; and Los Angeles Paper Handlers' Union No. 3, their officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Inducing or encouraging individuals employed by The San Francisco Examiner Division of The Hearst Corporation, The Chronicle Publishing Company, and The San Francisco Printing Company, Inc., or any other person engaged in commerce or in an industry affecting commerce with whom they have no primary labor dispute, to engage in a strike or refusal in the course

of their employment to perform services, where an object thereof is to force or require the above-named persons to cease doing business with each other or with their customers and suppliers, under circumstances prohibited by Section 8(b)(4)(i)(B) of the Act.

(b) Threatening, restraining, or coercing the above-named persons or any other person engaged in commerce or in an industry affecting commerce with whom they have no primary labor dispute, where an object thereof is to force or require the above-named persons to cease doing business with each other or with their customers and suppliers, under circumstances prohibited by Section 8(b)(4)(ii)(B) of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Post at their business offices and meeting halls in Los Angeles, California, copies of the attached notice marked "Appendix A."[11] Copies of said notice, on forms provided by the Regional Director for Region 21, shall, after being duly signed by the above Respondent Unions, be posted by them immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Unions to insure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail to the Regional Director for Region 21 sufficient copies of said notice, on forms pro-

[11]In the event this Order is enforced by a judgment of the United States Court of Appeals the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals enforcing an Order of the National Labor Relations Board."

vided by him, for posting by the San Francisco Examiner, the Chronicle, and the Printing Company, if willing.

(c) Notify the said Regional Director, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

B. Respondents Newspaper and Periodical Drivers' and Helpers' Union, Local 921, and San Francisco-Oakland Newspaper Guild, Local 52 of the American Newspaper Guild, their officers, agents, and representatives shall:

1. Cease and desist from:

(a) Inducing or encouraging individuals employed by The San Francisco Printing Company, Inc., or any other person engaged in commerce or in an industry affecting commerce with whom they have no primary labor dispute to engage in a strike or refusal in the course of their employment to perform services, where an object thereof is to force or require said person to cease doing business with The San Francisco Examiner or Chronicle under circumstances prohibited by Section 8(b)(4)(i)(B) of the Act.

(b) Threatening, restraining, or coercing The San Francisco Printing Company, Inc., or any other persons engaged in commerce or in an industry affecting commerce with whom they have no primary labor dispute, where an object thereof is to force or require said persons to cease doing business with the San Francisco Examiner or Chronicle under circumstances prohibited by Section 8(b)(4)(ii)(B) of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Post at their business offices and meeting halls in San Francisco, California, copies of the attached notice marked "Appendix B."[12] Copies of said notice, on forms provided by the Regional Director for Region 21, shall, after being duly signed by the above Respondent Unions be posted by them immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Unions to insure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail to the Regional Director for Region 21 sufficient copies of said notice, on forms provided by him, for posting by The San Francisco Printing Company, Inc., if willing.

(c) Notify the said Regional Director, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. Aug. 27, 1970.

Edward B. Miller, Chairman
Frank W. McCulloch, Member
Howard Jenkins, Jr., Member
NATIONAL LABOR RELATIONS BOARD

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[12]In the event this Order is enforced by a judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals enforcing an Order of the National Labor Relations Board."

Member Brown, concurring in part, dissenting in part:

Contrary to the majority, I would affirm the Trial Examiner's finding, for the reasons more fully stated in his Decision, that Respondents' picketing and related appeals to employees of the San Francisco Examiner constituted lawful primary activity outside the ambit of Section 8(b)(4)(B).

The Unions' conduct with respect to the San Francisco Examiner, a separate operating division of the Hearst Corporation, was merely designed to impose economic sanctions upon the Hearst Corporation, in support of basic contract demands during negotiations with the Los Angeles Herald-Examiner, another operating division of the Hearst Corporation. Thus, the question presented is whether a labor organization is precluded, by virtue of Section 8(b)(4)(B), from applying direct economic pressures to a single corporate enterprise in support of its dispute with a separate operating segment of that enterprise? An affirmative answer to this question is not supported by a literal reading of the statute; for, separate operating divisions of a single corporate enterprise, such as the San Francisco Examiner and the Los Angeles Herlad-Examiner, are not within the definition of the term "person" set forth in Section 2(1) of the Act. Furthermore, to extend, by interpretation, the secondary boycott provisions to restrict the scope of the Union activity involved here, not only insulates the "offending employer" from the effects of what essentially is its own dispute, but

runs counter to a consistent line of precedent cautioning against application of Section 8(b)(4)(B) in a fashion which condemns direct pressures in primary labor disputes.[13] As stated in *N.L.R.B. v. International Rice Milling Co.*, 341 U.S. 665, at pp. 672-673:

> . . . Congress did not seek to interfere with the ordinary strike. . . . This is emphasized in Section 13 as follows:
>
> > Nothing in this Act, except as specifically provided herein shall be construed so as to either interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.
>
> By Section 13, Congress has made it clear that Section 8(b)(4), and all other parts of the Act which otherwise might be read so as to interfere with, impede or diminish the union's traditional right to strike may be so read only if such interference, impediment or diminution is "specifically provided for" in the Act. . . . [footnotes omitted]

In my opinion, the majority's position represents a departure from traditional concepts of primary activity, and extends the proscriptions of Section 8(b)(4)(B) to protect the very "person" made "fair game" through

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[13]See, e.g. *Local 1976, Carpenters v. N.L.R.B. (Sand Door & Plywood Co.)*, 357 U.S. 93, 99; *Local 761, International Union of Electrical, Radio and Machine Workers (General Electric Co.) v. N.L.R.B.*, 366 U.S. 667, 672; *National Woodworkers Mfrs. Assn. v. N.L.R.B.*, 386 U.S. 612, 625-627.

enactment of Sections 13, 2(1) and 8(b)(4)(B) of the Act.[14]

Dated, Washington, D. C. Aug. 27, 1970.

Gerald A. Brown, Member
NATIONAL LABOR RELATIONS
BOARD

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[14]I disagree with the Trial Examiner's failure to dismiss the allegations based upon the direct appeals to employees of the San Francisco Printing Co. The Printing Co. is half-owned by the San Francisco Examiner and performs various services in the latter's behalf, including the printing of the newspaper. These activities are a vital step in the publication and sale of the *Examiner* and are duties which, as a matter of practice, are normally performed by employees of the newspaper. In these circumstances, I deem immaterial the fact that the Printing Co. is operated by Hearst as a joint venturer with the Chronicle and am of the opinion that the lawful pressures directed by the Examiner were also lawfully extended to employees of the Printing Co.

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IN THE

Supreme Court of the United States

October Term, 1971
No. 71-546

LOS ANGELES NEWSPAPER GUILD, LOCAL 69, *et al.*,
Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

LOS ANGELES HERALD-EXAMINER, DIVISION OF THE HEARST CORPORATION; and SAN FRANCISCO EXAMINER, DIVISION OF THE HEARST CORPORATION,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR EMPLOYER RESPONDENTS IN OPPOSITION.

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RICHARD C. WHITE,
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